

FCC Federal Communications Commission
MAIL SECTION

DA 97-341

FEB 21 4 31 PM '97
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Hayfield, Virginia))

MM Docket No. 97-68

RM-8999

NOTICE OF PROPOSED RULE MAKING

Adopted: February 14, 1997

Released: February 21, 1997

Comment Date: April 14, 1997

Reply Comment Date: April 29, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Vixon Valley Broadcasting ("petitioner"), requesting the allotment of Channel 263A at Hayfield, Virginia, as the community's first local aural transmission service. Petitioner states it will apply for the channel, if allotted.

2. In support of its request, petitioner states that Hayfield is located in northern Virginia and has a population of about 200 persons. It submits that the community has several businesses. Petitioner states that Hayfield would greatly benefit from an FM allotment since it would provide a local communications outlet for the residents in the Hayfield area regarding emergency conditions caused by severe weather or other health hazards.

3. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. Absent such recognizable community factors, the petitioner must provide the Commission with information to demonstrate that such a place has social, economic, cultural indicia to qualify it as a community for allotment purposes. See e.g., Beaver Springs, Pennsylvania, 4 FCC Rcd 5373 (1989), Sargent, Nebraska, 4 FCC Rcd 3933

(1989), Bartow, Georgia, et.al., 4 FCC Rcd 6876 (1989), East Hemet, California, et.al., 4 FCC Rcd 7895 (1989), and Ellwood, California, 50 Fed. Reg. 13031, published April 2, 1985. In this case, Hayfield is not incorporated or listed in the U.S. Census but is attributed with a population of 100 persons in the 1995 edition of the Rand McNally Commercial Atlas. However, we have found that this listing alone does not necessary indicate that a population grouping is a community for allotment purposes since in this case the grouping is devoid of the customary factors associated with community status, such as a library, shopping centers, churches, a newspaper and social or civil organizations. See e.g., Serles Valley, California, 3 FCC Rcd 5221 (1988) and Naples, Florida, 41 RR 2d 1549 (1977). Therefore, petitioner is requested to submit information regarding Hayfield, Virginia, to demonstrate whether it has any commercial establishments, social, economic, cultural or religious organizations, municipal services, or governments units that identify themselves specifically with Hayfield.

4. We believe petitioner's proposal warrants consideration, if Hayfield is ultimately found to qualify as a community for allotment purposes, since adoption of this proposal would provide a first local FM service to Hayfield. Channel 263A can be allotted to Hayfield consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction of 12.9 kilometers (18.0 miles) north in order to avoid short-spacing conflicts with the licensed operation of Stations WBIG(FM), Channel 262B, Washington, DC, and WQPO(FM), Channel 264B, Harrisonburg, Virginia.¹

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Hayfield, Virginia	---	263A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before April 14, 1997, and reply comments on or before April 29, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its

¹ The coordinates for Channel 263A at Hayfield are 39-20-59 and 78-18-14.

counsel or consultant, as follows:

Victor A. Michael Jr.
President, Vixon Valley Broadcasting
c/o Magic City Media
1912 Capitol Avenue, Suite 300
Cheyenne, Wyoming 82001
(Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.